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PACIFIC TELESIS
Group-Washington

May 24, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Re: *CC Docket No. 96-61, In the Matter of Policy and Rules Concerning the Interstate Interexchange Marketplace and Implementation of Section 254(g) of the Communications Act of 1934, as Amended*

On behalf of Pacific Telesis Group, please find enclosed an original and six copies of its *"Reply Comments"* in the above proceeding. Under separate cover, a paper copy of these reply comments as well as the reply comments on diskette have been sent directly to Ms. Janice Myles of the Common Carrier Bureau.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Alan Ciamporcero

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the	)	CC Docket No. 96-61
Interstate Interexchange Marketplace	)	Part II
	)	
Implementation of Section 254(g) of the	)	
Communications Act of 1934, as amended	)	
	)	
	)	

REPLY COMMENTS OF PACIFIC TELESIS GROUP

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May 24, 1996

TABLE OF CONTENTS

Summary

Permissive detariffing is the policy option most consistent with the deregulatory and pro-competitive thrust of the Telecommunications Act of 1996. The public will benefit significantly if the Commission allows carriers to offer interstate, interexchange services flexibly and efficiently.

Second, and consistent with the Commission's desire to eliminate any vestige of tacit price collusion, the Commission should move rapidly to allow the Bell companies to enter the interstate, interexchange market under pro-competitive conditions, including one-day notice of tariff revisions and the elimination of cost support requirements.

Third, carriers should be allowed to package customer premises equipment with interexchange services. The objections to the proposed relaxation of the outmoded bundling restriction by CPE vendors lack merit.

Finally, the record provides no basis for modifying the filed rate doctrine and related tariff rules, other than requiring carriers to provide a reasonable notice period of tariff changes that would modify the terms of negotiated service arrangements.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate Interexchange Marketplace	)	CC Docket No. 96-61 Part II
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	
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REPLY COMMENTS OF PACIFIC TELESIS GROUP

Pacific Telesis Group, Inc., hereby files this reply to the comments on Sections III (tariff forbearance), VII (tacit price collusion), VIII (bundling), and IX (other tariff-related issues) of the *Notice of Proposed Rulemaking* ("*Notice*") in the above-captioned proceeding regarding the regulation of interstate, interexchange telecommunications.[1]

In our opening comments, we urged the Commission to promote competition in interLATA services by removing regulatory impediments to full Bell Operating Company ("BOC" or "Bell company") participation. In particular, we urged the Commission to:

- adopt a policy of permissive tariff forbearance;
- recognize that prompt BOC entry into the interstate, interexchange market offers the best means of preventing tacit pricing collusion;

[1] FCC 96-123 (released March 25, 1996, *summary published*, 61 *Fed. Reg.* 14,717 (April 3, 1996).

- allow carriers to bundle customer premises equipment with interstate, interexchange services, so long as the bundled telecommunications service is also available *à la carte*; and

- modify current tariffing regulations to require carriers that provide facilities used for resale services to file tariff changes on several days advance notice.

The majority of commenters concurred with these basic positions. In this reply, we respond to certain matters raised in the comments of others -- principally incumbent interexchange carriers and customer equipment vendors. The Commission should not allow those commenters' fears of competition deter it from adopting pro-competitive policies consistent with the 1996 Act, and from moving swiftly to allow the BOCs to enter the interstate, interexchange services market on a competitive, nondominant basis.

I. A WIDE CONSENSUS OF THE COMMENTS FAVOR PERMISSIVE TARIFF FORBEARANCE

Our opening comments explained that a policy of "permissive" detariffing would most closely comport with the deregulatory intent of the Telecommunications Act of 1996 (the "1996 Act"), would substantially lower transaction costs and would benefit both subscribers and carriers by allowing a convenient means for establishing the terms of the business relationship. Our earlier comments also explained how these benefits would more than offset the concern that tariffs inhibit price competition on which the *Notice* primarily focuses.

These basic positions received substantial support in the comments. First, and most importantly, the comments reflect a strong consensus that permissive detariffing is

the most deregulatory approach.[2] As GTE points out in its comments, ". . . [P]ermissive detariffing is more consistent with the deregulatory intent of the 1996 Act [and] . . . permissive detariffing has given nondominant carriers maximum flexibility in determining how to offer their services without undue regulatory mandates."[3] Accordingly, permissive detariffing is the policy most consistent with the 1996 Act.[4]

Furthermore, the comments demonstrate a broad recognition that tariffs provide an efficient and cost-effective means of offering service to mass market consumers. MFS Communications aptly noted in its comments that "[i]f a carrier has a single tariff that governs its relationship with thousands (or millions) of customers, it can quickly reduce its prices for all customers, or change its offerings to respond to the market and benefit both carriers and customers by establishing rights and reciprocal responsibilities."[5] In addition, Sprint correctly observes that in the absence of tariffs, residential and small to medium-sized businesses will have less convenient access to long distance services, and carriers may be burdened with substantial transaction costs

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[2] *See, e.g., Comments of AT&T Corp.* at 3; *Comments of Cable & Wireless, Inc.* at 5; *Competitive Telecommunications Association Comments* at 4; *Comments of GTE* at 2; *MCI Comments* at 5; *U S West, Inc. Comments* at 2-3; *Comments of Ad Hoc Coalition of Corporate Telecommunication Managers* at 2

[3] *See* GTE at 3.

[4] Given the substantial doubt that the Commission even has the legal authority to make detariffing mandatory (*see, e.g., AT&T* at 7-12), permissive detariffing is the most prudent course as well.

[5] *See* Comments of MFS Communications Company, Inc. at 6.

in formalizing contracts with users.[6] Other commenters noted that without tariffs, carriers would have no legal basis for charging "casual users" of their services.[7]

Second, the comments also reflect widespread agreement that the *Notice* greatly exaggerates the role tariffs might play in inhibiting price competition. Although there is evidence that pricing collusion has occurred in the interstate, interexchange market, the comments establish that both consumers and competitors can and do routinely obtain pricing information from sources other than tariffs, such as advertising. Tariffs *per se* are not the culprit. Rather, factors such as tariffing requirements and industry structure[8] can contribute much more significantly to price collusion.

Tariffs *can* inhibit price competition, however, when different rules apply to different carriers. For this reason, it is essential that the Bell company affiliates be deemed nondominant in the provision of interstate, interexchange services, and subject to the same degree of regulation as AT&T, MCI, and SPRINT. If, for example, Pacific Bell Communications ("PB Com"), Pacific Telesis Group's interexchange affiliate, is subject to dominant carrier regulation in its provision of interstate, interexchange services, then it will stand at a significant, and artificial, disadvantage to

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[6] *See Comments of SPRINT* at 14.

[7] *See Comments of the Casual Calling Coalition* at 11.

[8] *See* Section II, *infra*.

the incumbent IXCs that currently dominate that market.[9] Congress's vision of greater competition in long distance services will be thwarted if PB Com and other Bell company interexchange affiliates are not given the same freedom to price services flexibly and to respond to competition, as are the big 3 IXCs.[10]

In particular, the delay caused by the notice period before a tariff filing can inhibit competition by encumbering the process of changing rates. It also can give competitors that face less regulation an opportunity to match or beat the rate reduction before the notice period even expires. The current one-day notice period for non-dominant IXC tariff filings, together with the abolition of the need to file cost support, which was adopted after the Sixth Report and Order in the *Competitive Carrier Proceeding*, alleviates this concern.[11] The same one-day period should apply to BOC affiliates as well.

Some parties suggest that the Commission require carriers to post their rates electronically in lieu of filing tariffs. While we have no particular problem in posting our rates electronically, at least once they become effective, electronic posting is no

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[9] The notion that PB Com, which has a zero share of the market, could be "dominant" in interstate, interexchange services while AT&T, which holds a 60 percent share and a nationally-recognized brand name, is "nondominant" is preposterous.

[10] *See Bell Atlantic Comments* at 4, *Comments of SBC Communications, Inc.* at 5-6, *U S West* at 3.

[11] *See Tariff Filing Requirements for Nondominant Common Carriers*, FCC 93-401 (released Aug. 18, 1993), *summary published* 58 *Fed. Reg.* 44,457 (Aug. 23, 1993).

substitute for a tariff.[12] In particular, posting rates would not establish the terms and conditions of service.

For these reasons, the potential public interest benefits from permissive detariffing greatly outweigh the alleged harms cited in the *Notice*. Moreover, as the next section articulates, concerns about price collusion have their origin in the market structure of the interexchange industry, not in tariffs.

II. THE BEST REMEDY FOR POSSIBLE TACIT PRICE COLLUSION IS PROMPT BOC INTERLATA ENTRY

The *Notice*'s invitation for comment regarding allegations of "tacit price coordination among AT&T, MCI, and Sprint with respect to basic schedule rates or residential rates in general,"[13] elicited the predictable denials by the incumbent IXCs that dominate the market.[14] At a minimum, to the extent that pricing collusion has occurred in the interstate, interexchange market, the *Notice* correctly recognizes that the 1996 Act provides the best solution to any problem of tacit price coordination "by allowing for competitive entry in the interstate interexchange market by the facilities-based BOCs and others."[15]

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[12] We agree with MCI that it would make little sense for the Commission to forbid carriers from filing tariffs due to a fear of price collusion, while at the same time substituting other means of making prices publicly available. *MCI* at 13.

[13] *Notice*, ¶ 83.

[14] *See AT&T* at 22; *MCI* at 20.

[15] *Notice*, ¶ 81.

Several parties contend that Bell company entry will somehow *facilitate* price collusion in the interstate, interexchange market.[16] Such contentions are absurd on their face and are utterly unsupported by any evidence. Neither logic nor economic theory supports the notion that the entry of additional facilities-based carriers will inhibit price competition. Quite the opposite is true: the introduction of additional facilities-based competition from experienced communications providers is the only reliable means of preventing price collusion.

III. CARRIERS SHOULD BE ALLOWED TO PACKAGE CUSTOMER PREMISES EQUIPMENT WITH INTEREXCHANGE SERVICES, SO LONG AS THE LATTER ARE ALSO SEPARATELY AVAILABLE

Our opening comments supported the proposal in the *Notice* to allow nondominant IXCs to bundle interstate, interexchange services with CPE,[17] on the condition that the Commission also require that IXCs offering such bundled sales packages also offer the interexchange service separately on an unbundled, nondiscriminatory basis.[18] As the *Notice* states, the proposal would benefit consumers by enabling carriers to offer "attractive service, equipment packages for customers."[19]

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[16] *AT&T* at 24; *Comments of ACTA* at 15; *Comments of the Alabama Public Service Commission* at 9.

[17] *Notice*, ¶ 88.

[18] *Comments of Pacific Telesis Group* at 11. In addition, we noted that IXCs should be under no obligation to provide CPE on a standalone basis.

[19] *Notice*, ¶ 88.

With the exception of incumbent CPE vendors, most commenters -- including many users -- took a similar position.[20]

We agree, moreover, with the comments of SBC that all interexchange carriers, not merely those classified as nondominant, should be allowed to bundle service with CPE. Both the interstate, interexchange (after BOC entry) and CPE markets will be competitive, and carriers should not be handicapped in their efforts to serve these markets by regulatory classifications.

The principal opposition to the unbundling proposal came from current CPE vendors, who express concern that IXCs would market service/CPE packages in anticompetitive ways. For example, the Consumer Electronics Retailer Coalition ("CERC") asserts that allowing carriers to offer bundled packages would decrease customer satisfaction.[21] However, the contrary is far more likely; allowing carriers to package CPE with service would make more options available to consumers. CERC appears to assume that consumers are uninformed and will not make appropriate choices in their own interest. Indeed, if anything, if CERC is correct that carriers would offer only a narrow range of CPE, then carriers would likely stand at a competitive disadvantage to its members.

Nor should fears of cross-subsidy deter the Commission from its proposed course. As noted above, the surest way to ensure that carriers do not charge service

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[20] *Accord NYNEX Comments* at 7; *Sprint* at 28.

[21] *See Comments of Consumer Electronics Retailers Association* at 6-8.

rates above competitive levels to "cross-subsidize" below-cost offerings of CPE is swift entry of the Bell companies into the interstate, interexchange market, which will provide the competitive pressure necessary on interexchange rates.

Some retailers fear that if carriers package CPE with interexchange services, then users will be deprived of their right to interconnect equipment of their choice. This is simply incorrect; nothing in the *Notice* would deprive consumers of their existing CPE interconnection rights. To the extent that IXCs might unreasonably limit the CPE included in their package offerings, then users may choose a carrier that offers a more attractive package.

Retailers' related concerns that carriers will not offer service to users who do not purchase a package are adequately addressed by requiring carriers to offer the interexchange component separately.[22] This solution also disposes of concerns that the proposal in the *Notice* would violate U.S. obligations under the General Agreement on Trade in Services and the North American Free Trade Agreement.[23]

Finally, some CPE vendors express concern that relaxing the rule would create an asymmetric regulatory regime between local and interexchange carriers. While this is true, the preferable solution would be to deregulate the industry further by

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[22] As explained in our opening comments, the Commission should not require carriers to sell CPE separately unless they choose to do so. The sale of CPE is not a common carrier service and the Commission cannot impose a duty to sell CPE.

[23] *See Comments of the Independent Data Communications Manufacturers Association* at 28-30.

eliminating the packaging restriction as to local carriers as well, a matter which the Commission should pursue.

For these reasons, the Commission should adopt the "unbundling" proposal in the *Notice*, subject to our suggested modification. Nevertheless, we see some merit to the suggestion by LDDS WorldCom that the Commission should delay the effective date of this change until AT&T has completed its spinoff of Lucent Technologies, and would not oppose such a brief delay.[24]

IV. THE RECORD DOES NOT SUPPORT ANY MAJOR CHANGE TO THE FILED RATE DOCTRINE

Section IX of the *Notice* sought comment regarding certain aspects of tariff regulation.[25] We believe that, other than an expansion of the notice period for tariff changes that would alter the terms of negotiated contracts, no change in existing law is required.

The relatively few comments that address this issue fail to establish a sufficient record for any material change in the filed rate doctrine. The filed rate doctrine is a matter of judicial precedent, and a filed tariff would continue to control the rights and obligations of the parties where the tariff covers the service provided. *See MCI Telecommunications Corp. v. FCC*, ___ U.S. ___, 114 S. Ct. 2223 (1994); *Maislin*

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[24] *Comments of LDDS WorldCom* at 18.

[25] *Notice*, ¶¶ 92-100. We agree that most of these questions would become moot if mandatory forbearance becomes the rule.

Industries v. Primary Steel, Inc., 497 U.S. 116 (1990). The most that this Commission can do is modify the test it applies it determining the reasonableness of a proposed tariff change. As we stated in our initial comments, however, the Commission's current "substantial cause" test is well-understood and strikes an appropriate balance between the interests of carriers and customers. It should be retained.

V. CONCLUSION

For the reasons stated herein and in our opening comments, the Commission should establish strongly pro-competitive policies that will enable the Bell companies to

compete vigorously in the interstate, interexchange services market. Only such competition will allow consumers to enjoy the full competitive benefits of Bell company entry.

Respectfully submitted,

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